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No. 94-577

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1994

ISLAMIC REPUBLIC OF IRAN,
Petitioner,
v.
SHAMS PAHLAVI, AKA H.I.H. PRINCESS SHAMS PAHLAVI; IERSPEX FINANCE N.V.,
Respondents.

On Petition for Writ of Certiorari to the California Court of Appeal, Second Appellate District, Division One

RESPONDENTS' BRIEF IN OPPOSITION

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RESPONDENTS' BRIEF IN OPPOSITION

Respondents Shams Pahlavi and Ierspex Finance N.V. oppose the petition of the Islamic Republic of Iran for certiorari. As set forth below, the requirements for the issuance of a writ of certiorari have not been satisfied.[1]

COUNTERSTATEMENT OF THE CASE

Certain matters have been omitted or not fully stated in the Petition; this counterstatement will explicate them.

[1]There are no parent or subsidiary companies to be listed pursuant to Rule 29.

This case arose out of the notorious 1979 seizure of the American embassy in Tehran. Following the hostages' release in 1981, the Islamic Republic of Iran brought suit in California Superior Court, Los Angeles County, against respondents Shams Pahlavi, the late Shah's elder sister, and Ierspex Finance, N.V. The Islamic Republic sought recovery of more than $3 billion. The original complaint, filed in 1981, contained no mention whatsoever of a decree such as the one petitioner seeks to enforce here — even though the decree purportedly was issued more than two years earlier, in February 1979. Instead, mention of the decree first appeared twelve years later, in the First Amended Complaint, filed in 1991. Under California law, the statute of limitations is four years. CAL.CIV.PROC.CODE § 343.

The Shah abdicated his throne on January 16, 1979, and the Ayatollah Khomeini returned from exile in February. The very month he returned, Khomeini purportedly issued the "decree" which petitioner now seeks to enforce. No court has ever seen this decree, however. It was not attached to the Second Amended Complaint. Instead, petitioner appended a purported translation, which the California Court of Appeal reproduced verbatim in its opinion. (Petition, App. A 3 - A 4.)

Several aspects of the purported decree are notable. The translation obviously is poor and ambiguous, if in fact the decree exists at all. The decree uses the term "confiscation", but states that confiscated property does *not* belong to the government (a term that itself is not defined). At the time the decree purportedly was issued, the Ayatollah Khomeini had no recognized official status, at least as far as the rest of the world could tell. Iran was in political turmoil; Mehdi Bazargan, not Khomeini, was the prime minister; various political groups, some fundamentalist, some not, were just beginning to emerge. The Islamic Republic of Iran, the petitioner here, had not yet been formed; it would be nearly

another year before a constitution establishing that entity was ratified. S. BAKHASH *et al.*, IRAN: A COUNTRY STUDY (1987) at 48-49, 195.

In the trial court, the discovery propounded by Pahlavi addressed fundamental, but routine, issues of liability and damages raised by the decree and the complaint. For instance, the discovery sought authentication and production of the decree, as well as the identity of the translator. The discovery asked questions drawn directly from the allegations of the complaint, including asking for supporting facts and identification of witnesses. The discovery also sought such basic information as whether the Islamic Republic of Iran contended that Pahlavi had taken from Iran property that was not hers. Although petitioner had responded to discovery a decade ago in connection with a motion to quash service of process (*Islamic Republic of Iran v. Pahlavi*, 160 Cal.App.3d 620, 628, 206 Cal.Rptr. 752, 756-57 (1984)), this time it took a different tack. It deliberately, knowingly and steadfastly refused to give answers to any of the discovery. (*See* Petition, App. A 8 - A 10.)

With these matters in mind, it is clear that the writ should not issue.

SUMMARY OF ARGUMENT

This case presents no issue suitable for review. Review could affect no one other than the parties to this specific dispute, for litigation under the provisions of the Algerian Accords at issue here already has concluded against other members of the Shah's family. Moreover, the courts in those cases reached the same conclusion as the court below, that the Accords provide no special status to the Islamic Republic. That conclusion, and the accompanying conclusion that assertion of the act of state doctrine does not free the Islamic Republic from the necessity of responding to discovery, clearly were correct.

REASONS FOR DENYING THE WRIT

I.

THE DECISION BELOW IS CONSISTENT WITH DECISIONS OF OTHER COURTS WHICH HAVE CONSIDERED THE MEANING OF THE ALGERIAN ACCORDS

In holding that the Algerian Accords do not insulate the Islamic Republic from discovery obligations, the California Court of Appeal acted consistently with every other court which has construed these provisions of the Accords. Each court has held that the Accords do not create special rules for the Islamic Republic. In California, the courts so held for the first time a decade ago, ruling — in this same case — that the Accords do not exempt the Islamic Republic from the usual jurisdictional requirements. *Islamic Republic of Iran v. Pahlavi*, 160 Cal.App.3d 620, 206 Cal.Rptr. 752 (1984). The New York courts also have held that the Accords created no special rules for the Islamic Republic, ruling that the Accords did not strip the Shah's family of the defense of *forum non conveniens*. *Islamic Republic of Iran v. (Mohammed Reza and Farah Diba) Pahlavi*, 62 N.Y.2d 474, 478 N.Y.S.2d 597, 467 N.E.2d 245 (1984), *cert. denied*, 469 U.S. 1108 (1985); *Islamic Republic of Iran v. (Ashraf) Pahlavi*, 473 N.Y.S.2d 801 (1984), *aff'd mem.*, 486 N.Y.S.2d 939, 476 N.E.2d 338 (1985). In holding once again, this time in the discovery context, that the Accords do not create special rules for the Islamic Republic, the opinion below presents no novel issue or extraordinary interpretation for review by this Court.

Moreover, this case cannot have any impact beyond this specific situation. The provisions of the Accords at issue here concern only close members of the Shah's family. The opinion below concerned the assets of one family member, the Shah's elder sister. The New York litigation concerned

other family members — the Shah's wife, his other sister, the Shah himself and, after his death, the Shah's estate. That litigation has long since concluded. *Islamic Republic of Iran v. (Mohammed Reza and Farah Diba) Pahlavi, supra; Islamic Republic of Iran v. (Ashraf) Pahlavi, supra.* In every sense, then, this case is *sui generis*, and can have no impact beyond its specific facts.

II.

THE DECISION BELOW CLEARLY WAS CORRECT

A. The Ruling on the Algerian Accords Was Correct

The decision below was indisputably correct in recognizing that the Accords do not require United States courts to ignore due process and normal discovery rights. On their face, the Accords only obligate the United States to state its position that Iranian decrees are to be enforced in accordance with United States law. (Petition, App. G 1.) The United States fulfilled its obligation by stating its position. Even assuming that the Accords require the courts to do something other than receive the position of the United States, United States law throughout the country includes the right to discovery. If the Accords excluded the right to discovery, then the language "should be enforced ... in accordance with United States law" would mean that Iranian decrees must be enforced *without* regard to United States law. That is an absurd reading of the Accords: likening the Accords to a treaty, "[t]he clear import of treaty language controls unless 'application of the words of the treaty according to their obvious meaning effects a result inconsistent with the intent or expectations of its signatories.' [citation omitted.]" *Sumitomo Shoji America, Inc. v. Avagliano*, 457 U.S. 176, 180, 72 L.Ed.2d 765, 102 S.Ct. 2374 (1982).

The negotiating history corroborates the plain meaning of the Accords. The record confirms that United States commitments were limited, that confiscation of the Shah's family's assets would not be allowed, and that due process would be guaranteed. The negotiations were conducted by the Honorable Warren Christopher, who was then Deputy Secretary of State. Contrary to the representations made by Petitioner here — that the United States "undertook the duty to return assets to IRAN" (Petition at 9) — Secretary Christopher testified before Congress that such assets could be returned only if a court, having first guaranteed the defendant full due process of law, then ruled in favor of the Islamic Republic. For example, Secretary Christopher testified:

> Throughout the crisis, Iran insisted on a return of the wealth of the former Shah and his family. . . .
>
> During the negotiations, the U.S. never deviated from the position that under our system of government, the transfer of private property from one party to another can be ordered only pursuant to procedures which afford due process of law. Late in the negotiations Iran finally accepted that principle, and it is reflected in the Declarations. As a result, the Shah's estate and his close relatives will have full protection of due process of law with respect to claims against their properties by Iran.
>
> Under the Declarations (Paras. 12-15) the U.S. has agreed to take certain actions in connection with any lawsuits brought by Iran regarding the Shah's wealth, but these commitments are carefully limited. . . .
>
> In sum, the United States refused to return the Shah to Iran prior to his death, and it has also steadfastly refused to confiscate and transfer his U.S. assets, insist-

ing instead on the maintenance of the Constitutional requirements of due process of law.

Iran's Seizure of the United States Embassy: Hearings before the House Comm. on For. Affairs, 97th Cong., 1st Sess. (February 17, 19, 25 and March 11, 1981) 153-55.

Far from instructing the courts to return assets of the Pahlavi family to Iran, then, the Accords instead simply allowed the Islamic Republic access to American courts in an effort to demonstrate that the Islamic Republic had a legal right to those assets. But it was clear that the Islamic Republic was given no special preference in how the courts were to view any such case. Indeed, as an exchange between Secretary Christopher and Senator Lugar demonstrated, any litigation brought by the Islamic Republic would have to be evaluated by American courts, and even would be subject to the defense that the litigation failed to state a claim upon which relief may be granted:

> "SENATOR LUGAR. As a point of curiosity, in your prepared statement, Secretary Christopher, you mentioned the possibility that suits may come with regard to the Shah's property, perhaps to an individual alleged to be a close relative of the Shah. On what basis could such a suit be filed? In other words, is the basis that the Iranian Government believes that the Shah or his family confiscated wealth or property owned by Iran and is suing in our courts to take that property back?
>
> "MR. CHRISTOPHER. Yes, sir. Any number of courses of action are possible. The traditional one in that situation is to assert that the funds were embezzled from the country by either the leader of the country, or the former leader or his relatives, and to assert the legal right to the funds as having been illegally taken from the country.

> "SENATOR LUGAR. Then *our court would have to make a judgment on the question of embezzlement,* on the definition of that in international law, or on succession of authority and overthrows of governments, that sort of thing?
>
> "MR. CHRISTOPHER. Exactly — *and on whether or not there is a right within our legal system for Iran to assert that claim.* I think it would be a very difficult lawsuit."

The Iran Agreements: Hearings before the Senate Comm. on For. Relations, 97th Cong., 1st Sess. (February 17, 18 and March 4, 1981) 56 (emphasis added.)

In accord with this history, when the United States stated its official position in the trial court here it stated that Iran must prove its case; the United States gave its view that the decree "can be interpreted as a demand for return of property to the extent that the property *is shown* to have been illegally taken from the Iranian treasury." (Petition, App. P 1 (emphasis added).)

This history confirms that the words "in accordance with United States law" have the obvious meaning, that the provisions of United States law govern the course of any lawsuit which the Islamic Republic chose to bring. As a footnoted afterthought, however, the Islamic Republic asserts here that the phrase "in accordance with United States law" must mean something other than the normal litigation rules because the Islamic Republic had the right to bring suit in American courts even absent the existence of the Accords. (Petition at 8 n.1.) Although it did make this assertion in seeking review before the California Supreme Court, the Islamic Republic did not raise this argument either in the trial court or the California Court of Appeal which rendered the decision at issue.

The argument is wrong in any event. Historically, when a government was unrecognized — as was the case with the Islamic Republic of Iran at the time the Algerian Accords were signed, and remains so today — that government was *not* entitled to proceed in American courts. *Guaranty Trust Co. v. United States*, 304 U.S. 126, 137, 58 S.Ct. 785, 82 L.Ed. 1224 (1938); *cf. Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 410, 84 S.Ct. 923, 11 L. Ed.2d 804 (1964). The Algerian Accords thus gave the Islamic Republic an assurance of access to the courts when access might not have been granted otherwise. In fact, subsequent cases have identified the Algerian Accords as one basis for saying that the Islamic Republic of Iran may appear in United States courts even though the United States still does not recognize the government. *National Petrochemical Company of Iran v. M/T Stolt Sheaf*, 860 F.2d 551, 555 (2d Cir. 1988), *cert. denied*, 489 U.S. 1081, 103 L.Ed.2d 840, 109 S.Ct. 1535 (1989).

Nor does this case present any conflict with *United States v. Pink*, 315 U.S. 203, 86 L.Ed. 796, 62 S.Ct. 552 (1942) and *United States v. Belmont*, 301 U.S. 324, 81 L.Ed. 1134, 57 S.Ct. 758 (1937). The opinion below correctly recognized that the Islamic Republic's reliance on those cases is misplaced. (Petition, App. A 17.) Those cases discussed claims settlement arrangements which were part of the official recognition of the Union of Soviet Socialist Republics. *Pink* and *Belmont* held that federal treaty law was supreme over conflicting New York state law in determining the rights to assets assigned by the U.S.S.R. to the United States. Unlike *Pink* and *Belmont*, however, this case presents no question of federal supremacy over state law. Indeed, had the Islamic Republic filed its action in federal rather than state court, the issue, and the result, would have been the same: like the California statutes, the federal rules of civil procedure give parties the right to basic discovery. FED.R.CIV.P. 26-37. There is no conflict between a compact

that certain Iranian decrees and judgments "should be enforced . . . in accordance with United States law" and the use of United States law when those decrees and judgments are sought to be enforced.

B. The Ruling on the Act of State Doctrine Was Correct

Similarly, in holding that the act of state doctrine does not free the Islamic Republic from discovery obligations, the opinion below again maintains consistency with a long line of cases. Under the act of state doctrine, United States courts usually will not hear challenges to a foreign country's nationalization of American property located in that foreign country. In contrast, a long line of cases unwaveringly holds that when a foreign country seeks to apply its confiscation decrees extraterritorially, to property within the United States, our courts will not enforce them. As this Court has explained:

> In every case in which we have held the act of state doctrine applicable, the relief sought or the defense interposed would have required a court in the United States to declare invalid the official act of a foreign sovereign *performed within its own territory*.

W. S. Kirkpatrick & Co., Inc. et al. v. Environmental Tectonics Corp., International, 493 U.S. 400, 405, 107 L.Ed.2d 816, 110 S.Ct. 701 (1990) (emphasis added). The courts of appeals consistently have held that foreign acts of confiscation can have no effect in this country. *Republic of Iraq. v. First National City Bank,* 353 F.2d 47, 51 (2d Cir. 1965), *cert. denied,* 382 U.S. 1027 (1966); *Bandes v. Harlow & Jones, Inc.,* 852 F.2d 661, 666-67 (2d Cir. 1988); *Williams & Humbert Ltd. v. W. & H. Trade Marks (Jersey) Ltd.,* 840 F.2d 72, 75 (D.C. Cir. 1988); *United Bank Ltd. v. Cosmic International, Inc.,* 542 F.2d 868, 877 (2d Cir. 1976); *Maltina Corp. v. Cawy Bottling Co.,* 462 F.2d 1021,

1025-27 (5th Cir.), *cert. denied* 409 U.S. 1060 (1972); *Zwack v. Kraus Bros. & Co.*, 237 F.2d 255, 259 (2d Cir. 1956).

In any event, no case holds that the mere *assertion* of the act of state doctrine eliminates the right to discovery. In this case, it was not even clear that an act of state was involved, and discovery certainly was necessary to probe that issue. *See, D'Angelo v. Petroleos Mexicanos,* 331 A.2d 388, 392 (Del. 1974) ("In the absence of a general appearance *and the proper pleading and proof of the defense* of the act of state doctrine, defendant is not entitled to judicial consideration of the effect of the act of state doctrine upon plaintiff's claim . . . .") (emphasis added.)

III.

THE RECORD PRESENTS INDEPENDENT GROUNDS FOR SUSTAINING THE DECISION BELOW

Resolution of the question presented does not change the outcome of the case. The decision must be upheld if it may be sustained on any theory presented by the record. Here several independent grounds support affirmance. The Islamic Republic of Iran did not plead a claim to enforce the decree until twelve years after it had been issued; thus the claim was barred by the statute of limitations. CAL.CIV.PROC.CODE § 343; *Dore v. Thornburgh* 90 Cal. 64, 27 P. 30 (1891). Such a claim does not lie in American courts in any event, as *Republic of Iraq* and its progeny demonstrate. As for the act of state doctrine, the Islamic Republic did not even assert it as an objection to the discovery at issue; under California law, it thereby waived the objection. *West Pico Furniture Co. v. Superior Court*, 56 Cal.2d 407, 414, 15 Cal.Rptr. 119, 364 P.2d 295 (1961); *see also Schaff v. Superior Court*, 146 Cal.App.3d 921, 923, 194 Cal.Rptr. 546 (1983).

CONCLUSION

The Islamic Republic took the extraordinary position that it need not respond to any discovery. The California Court of Appeal instead held the Islamic Republic to the ordinary standard of compliance with the rules. The decision presents no grounds for review, and certiorari should be denied.

Dated: October 21, 1994

Respectfully submitted,

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